

COURT  
UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO

2. The Defendant further understands the Defendant's rights:
  - a. to plead not guilty, or having already so pleaded, to persist in that plea;
  - b. to have a trial by jury; and
  - c. at a trial:
    - 1) to confront and cross-examine adverse witnesses,
    - 2) to be protected from compelled self-incrimination,

3) to testify and present evidence on the Defendant's own behalf,

4) to compel the attendance of witnesses for the defense, and

**WAIVER OF RIGHTS AND PLEA OF GUILTY**

3. The Defendant agrees to waive these rights and to plead guilty to the single count indictment charging a violation of 18 U.S.C. §§ 1153 and 1112: Involuntary Manslaughter.

**SENTENCING**

4. The Defendant understands that the maximum penalty the Court can impose for the charge is:

- a. imprisonment for a period of not more than 8 years;
- b. a fine not to exceed the greater of \$250,000 or twice the pecuniary gain to the Defendant or pecuniary loss to the victim;
- c. a mandatory term of supervised release of not more than 3 years that must follow any term of imprisonment. (If the Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the Defendant's supervised release could be revoked -- even on the last day of the term -- and the Defendant could then be returned to another period of incarceration and a new term of supervised release.);
- d. a mandatory special penalty assessment of \$100.00; and
- e. restitution as may be ordered by the Court.

5. The parties recognize that the federal sentencing guidelines are advisory, and that the Court is required to consider them in determining the sentence it imposes.

6. The parties agree that, as part of the Defendant's sentence, the Court will enter an order of restitution pursuant to the Mandatory Victim's Restitution Act, 18 U.S.C. § 3663A.

7. The United States reserves the right to make known to the United States Pretrial Services and Probation Office and to the Court, for inclusion in the presentence report to be prepared under Federal Rule of Criminal Procedure 32 any information the United States believes may be helpful to the Court, including but not limited to information about any relevant conduct under U.S.S.G. § 1B1.3.

### **DEFENDANT'S ADMISSION OF FACTS**

8. By my signature on this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of the offense(s) to which I am pleading guilty. I recognize and accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this plea, the United States could prove facts sufficient to establish my guilt of the offense(s) to which I am pleading guilty beyond a reasonable doubt. I specifically admit the following facts related to the charges against me, and declare under penalty of perjury that all of these facts are true and correct:

**On or about October 22, 2011, in Indian Country, in Rio Arriba County, in the District of New Mexico, I, JEREMIAH BURNS, an Indian, unlawfully killed John Doe, while in the commission of an unlawful act not amounting to a felony, that is while violating New Mexico's statute prohibiting driving under the influence of intoxicating liquor, N.M. Stat. Ann. 66 8-102 (1978), by having a blood alcohol concentration of eight one-hundredths (.08) grams or more in one hundred milliliters of blood within three hours of driving, and, being under the influence of marijuana, and as a result of drinking liquor and using marijuana I was less able, both mentally and physically, to exercise the clear judgment and steady hand necessary to handle a vehicle with safety to the person and the public. I operated a motor vehicle without due caution and circumspection and with a wanton and reckless disregard for**

**human life. I knew and should have known that my conduct imperiled the lives of others.**

9. By signing this Agreement, the Defendant admits that there is a factual basis for each element of the crime(s) to which the Defendant will plead guilty. The Defendant agrees that the Court may rely on any of these facts, as well as facts in the presentence report, to determine the Defendant's sentence, including, but not limited to, the advisory guideline offense level.

### **STIPULATIONS**

10. The United States and the Defendant stipulate as follows:

- a. The parties stipulate, pursuant to Rule 11(c)(1)(C), Fed. R. Crim. P., that the Defendant shall be sentenced to twenty (20) months of incarceration.
- b. This agreement takes into account the Defendant's acceptance of responsibility, with no further reduction to occur.
- c. Following imprisonment, the Defendant shall be placed on supervised release as required by law.
- d. The Defendant stipulates that he will comply with the mandatory and special conditions of his supervised release, as determined by the United States Probation Office.
- e. The Defendant recognizes that this plea agreement has already conferred a benefit on the Defendant. Consequently, in return for the benefit conferred on the Defendant by entering into this agreement, the Defendant agrees not to seek a downward departure or variance from the agreed upon sentence. In other words, the Defendant agrees that the agreed upon sentence is a reasonable sentence. If the Defendant, in violation of this paragraph,

should nevertheless seek a downward departure or variance, including a departure or variance from the guideline Criminal History Category, the United States shall have the right to treat this plea agreement as null and void and to proceed to trial on all charges before the Court.

- f. If the Court rejects the plea agreement containing a provision of the type specified in Fed. R. Crim. P. 11(c)(1)(C), the Court must do the following on the record and in open court (or, for good cause, in camera):
  - 1) Inform the parties that the Court rejects the plea agreement;
  - 2) Advise the Defendant personally that the Court is not required to follow the plea agreement and give the Defendant the opportunity to withdraw the plea; and
  - 3) Advise the Defendant personally that if the plea is not withdrawn, the Court may dispose of the case less favorably toward the Defendant than the plea agreement contemplated.
- g. Except under circumstances where the Court, acting on its own, fails to accept this plea agreement, the Defendant agrees that, upon the Defendant's signing of this plea agreement, the facts that the Defendant has admitted under this plea agreement as set forth above, as well as any facts to which the Defendant admits in open court at the Defendant's plea hearing, shall be admissible against the Defendant under Federal Rule of Evidence 801(d)(2)(A) in any subsequent proceeding, including a criminal trial, and the Defendant expressly waives the Defendant's rights under Federal Rule

of Criminal Procedure 11(f) and Federal Rule of Evidence 410 with regard to the facts the Defendant admits in conjunction with this plea agreement.

**DEFENDANT'S ADDITIONAL OBLIGATIONS**

11. The Defendant understands the Defendant's obligation to provide the United States Pretrial Services and Probation Office with truthful, accurate, and complete information. The Defendant represents that the Defendant has complied with and will continue to comply with this obligation.

**WAIVER OF APPEAL RIGHTS**

12. The Defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford a Defendant the right to appeal a conviction and the sentence imposed. Acknowledging that, the Defendant knowingly waives the right to appeal the Defendant's conviction(s) and any sentence, including any fine, in conformity with this agreement, as well as any order of restitution entered by the Court. In addition, the Defendant agrees to waive any collateral attack to the Defendant's conviction(s) and any sentence, including any fine, pursuant to 28 U.S.C. §§ 2241 or 2255, or any other extraordinary writ, except on the issue of counsel's ineffective assistance in negotiating or entering this plea or this waiver.

**GOVERNMENT'S AGREEMENT**

13. Provided that the Defendant fulfills the Defendant's obligations as set out above, the United States agrees that:

- a. The United States will not bring additional criminal charges against the Defendant arising out of the facts forming the basis of the present indictment.

14. This agreement is limited to the United States Attorney's Office for the District of New Mexico and does not bind any other federal, state, or local agencies or prosecuting authorities.

#### **VOLUNTARY PLEA**

15. The Defendant agrees and represents that this plea of guilty is freely and voluntarily made and is not the result of force, threats, or promises (other than the promises set forth in this agreement). There have been no promises from anyone as to what sentence the Court will impose. The Defendant also represents that the Defendant is pleading guilty because the Defendant is in fact guilty.

#### **VIOLATION OF PLEA AGREEMENT**

16. The Defendant agrees that if the Defendant violates any provision of this Agreement, the United States may declare this Agreement null and void, and the Defendant will thereafter be subject to prosecution for any criminal violation, including but not limited to any crime(s) or offense(s) contained in or related to the charges in this case, as well as perjury, false statement, obstruction of justice, and any other crime committed by the Defendant during this prosecution.

#### **SPECIAL ASSESSMENT**

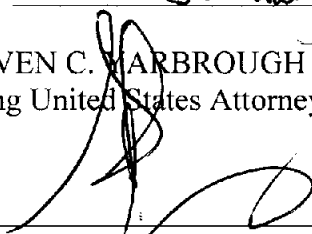
17. At the time of sentencing, the Defendant will tender to the United States District Court, District of New Mexico, 333 Lomas Blvd. NW, Suite 270, Albuquerque, New Mexico 87102, a money order or certified check payable to the order of the United States District Court in the amount of \$100.00, in payment of the special penalty assessment described above.

**ENTIRETY OF AGREEMENT**

18. This document and any addenda are a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties. The parties agree and stipulate that this agreement will be considered part of the record of the Defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding. This agreement is effective upon signature by the Defendant and an Assistant United States Attorney.


AGREED TO AND SIGNED this 3<sup>rd</sup> day of January, 2014.

STEVEN C. MARBROUGH  
Acting United States Attorney

  
\_\_\_\_\_  
KYLE T. NAYBACK  
Assistant United States Attorney  
Post Office Box 607  
Albuquerque, New Mexico 87102  
(505) 346-7274



I am Jeremiah Burns' attorney. I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

  
MARGARET KATZE  
Attorney for the Defendant

This agreement has been read to me in the language I understand best, and I have carefully discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. No promises or inducements have been given to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.

  
JEREMIAH BURNS  
Defendant